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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2413/2014*, **

Communication submitted by:	Prashanta Kumar Pandey (represented by counsel, Philip Grant, of TRIAL: Track Impunity Always
Alleged victim:	The author
State party:	Nepal
Date of communication:	20 February 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 4 June 2014 (not issued in document form)
Date of adoption of Views:	30 October 2018
Subject matters:	Arbitrary arrest and detention; extraction of confession under torture; lack of effective investigation of allegations of torture
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; respect for the inherent dignity of the human person; right to a fair trial; right to an effective remedy
Articles of the Covenant:	2 (3), 7, 9 (1)–(3), 10 (1) and 14 (2) and (3) (b) and (g)
Article of the Optional Protocol:	5 (2) (b)

1. The author of the communication is Prashanta Kumar Pandey, a national of Nepal born on 26 September 1985. He claims that the State party has violated his rights under articles 7 and 10 (1), read alone and in conjunction with article 2 (3), and under articles 9

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany, Margo Waterval and Andreas Zimmermann.

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(1)–(3) and 14 (2) and (3) (b) and (g) of the Covenant. The Covenant and its Optional Protocol entered into force for Nepal on 14 August 1991. The author is represented by counsel.

The facts as submitted by the author

2.1 The author used to work as a medical assistant and ran a medical shop in Jhulinipur, Rupandehi District, Nepal. On 7 April 2011, while crossing the Indian-Nepalese border, he was arrested by three police officers from the Rupandehi District Police Office. The police officers were dressed in plain clothes. They surrounded the author and asked him to follow them. When the author refused, one of the officers placed a gun to his head and tied his hands behind his back. No warrant was presented to the author, and he was not informed of the reasons for his arrest or of his rights. The author was taken to the Barmeli Tole police post, where he was held for two hours. The guards slapped him three times during this period.

2.2 From Barmeli Tole, the author was taken to the office of the Senior Superintendent of Police Prakash Aryal, where he was interrogated. He was asked about his involvement in the planning and execution of the bombing of a van, which had taken place on 27 March 2011, claiming the lives of two persons and injuring dozens of others. The author answered that he did not know anything about the bombing. At that point, policemen started severely beating him, which included slapping, punching and kicking. They also put a hard betel nut on the palm of his hand and placed the leg of a table on to the nut. Then, three or four policemen climbed on top of the table, pressing the leg of the table on to the author's palm. This treatment was extremely painful and traumatic for the author. The police subjected him to this treatment for over an hour. Pressure would be applied to his hand for about five to seven minutes and then be stopped while questions were asked of him, only for this to resume a few minutes later. During the interrogation the police tried to obtain a confession of his involvement in the bombing, as well as an indication of the complicity of three other persons. The author refused to provide any such confirmation.

2.3 Having not heard from the author, his mother attempted to contact him unsuccessfully on his mobile phone and by making inquiries with family members and friends. On 8 April 2011, she filed a missing person's report with the Rupandehi District Police Office. When she filed the report, the police denied that her son was being kept in custody. On the same day, the author's mother also submitted a complaint to the local office of the National Human Rights Commission in Butwal, requesting the commission's intervention in establishing the whereabouts of her son and in securing his release. The Commission did not take any formal steps to establish the whereabouts of her son. It was not until February 2014, after having been requested by the author to provide information on the action taken following the complaint, that the Commission provided a written response to the author.

2.4 On 8 April 2011, the author was again taken to the office of the Senior Superintendent of Police Prakash Aryal, where he was interrogated and beaten with batons in order to extract a confession. The interrogation lasted for hours and he was repeatedly questioned about his alleged involvement in the bomb attack of 27 March 2011. At one stage, the author was blindfolded and his mouth and ears were tightly bound with bandages. He was taken to a guard room, where he was forced to stand continuously for more than 50 hours, until 11 April 2011. Whenever he tried to sit, he was beaten. He was not allowed any food or drink.

2.5 On 11 April 2011, the author was taken back to the office of the Senior Superintendent. The bandages were removed from his mouth and ears, but he was left blindfolded. He was interrogated again and subjected to further beatings, including being hit on the head with a baton. One of the policemen stepped on his toe and plucked out his toenail. When the author requested to go to the toilet he was forced by the policemen to urinate on an electric heater. The electric shock he received caused him to faint and caused bleeding from his genitals. When he recovered consciousness the blindfolds had been removed. He did not receive any medical assistance or treatment. He was asked once more to confess to his involvement in the bomb attack and was threatened with death if he refused to do so. Exhausted, scared and in pain, he confessed his involvement in the attack,

as well as the involvement of the three persons mentioned by the police. The next day he was taken to hospital for a medical test, but did not receive any treatment. Later on, he was forced to sign a confession that had been drafted by the police but that he could not read. He was also forced to record a video statement. He was held incommunicado from 7 to 13 April 2011. Over this period he did not have access to a lawyer and could not communicate with his family. He did not receive any food for three days and was given nothing to drink for two days.

2.6 On 13 April 2011, the author was remanded in custody by the Rupandehi District Court and was transferred to the area police office in Butwal. He was shown in public in the presence of journalists and his whereabouts were disclosed. Newspaper articles were published presenting him as one of the main perpetrators of the bomb attack, although none of the allegations had been corroborated by means of thorough investigations or established in a final judgment. He was kept in Butwal for 28 days. During this time he was occasionally beaten and insulted by policemen. He was kept in a severely overcrowded cell with 50 other detainees, even though the cell could accommodate only 10 persons. At night they had to take turns sleeping on wooden planks, and they only had a few dirty blankets. There was no ventilation in the cell, and hygienic conditions were very poor. The cell was infested with mosquitoes and bugs.

2.7 On 8 May 2011, the author was brought before a judge at the Rupandehi District Court. The author expressly declared that his confession had been extracted under torture and that he had no involvement in the bomb attack of 27 March 2011.[1] On 11 May 2011, the District Court ordered that the author be kept in pretrial detention. The author was subsequently held in pretrial detention at the District Prison at Kalipapath-12 in Bhairahawa for a year until his trial started.

2.8 On 13 June 2012, the Rupandehi District Court found the author guilty of preparing the bomb attack and sentenced him to one year of imprisonment. The Court did not find any evidence of the author's involvement in the actual placement of the bomb. The confession extracted from the author under torture was admitted as valid evidence during the proceedings and no investigation into his claim of having been subjected to torture was initiated by the authorities. However, given that the author had already spent more than a year in detention, he was immediately released upon pronouncement of the verdict. Upon his release, the author was hospitalized due to his poor state of health. The torture he had been subjected to had caused him significant mental and permanent physical harm. He was rendered sexually impotent and sterile due to the electric shock received when he was forced to urinate on the electric heater. He sometimes suffers from loss of consciousness due to the torture inflicted on him. He has difficulty sleeping, suffers from panic attacks and depression and lives in a constant state of fear.[2] His health conditions will require prolonged medical treatment.

2.9 On 16 October 2012, the Terai Human Rights Defenders Alliance, a non-governmental organization, submitted an urgent appeal on the author's behalf to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. On 12 December 2012, the author's mother filed a complaint[3] on his behalf before the Rupandehi District Court, stating that police officers had tortured the author. On the same date, the registrar of the Court refused to register the complaint, as it did not comply with the 35-day statutory limit established under the Compensation relating to Torture Act, 1996. The author notes that it would have been materially impossible for him to file a complaint within 35 days of the date of the infliction of torture, as he was being held in detention and was not allowed to file any complaint or obtain a medical certificate (another condition required under domestic law). He further notes that he did not file his

[1] The author refers to an unofficial translation of the Rupandehi District Court hearing on 8 May 2011, according to which he claimed during this court proceeding to have been subjected to torture.

[2] The author attaches a medical certificate from the Universal College of Medical Sciences, in which his state of anxiousness and his post-traumatic symptoms as described relate to the torture he was subjected to while he was in detention.

[3] Under the Compensation relating to Torture Act, 1996.

complaint immediately after his release, as he was hospitalized and traumatized. It took him months to leave the hospital and to overcome the fear of filing a complaint. He additionally argues that the 35-day statutory limit for bringing claims of torture, counting from the date of the torture or the date of release, is inconsistent with the gravity of the offence.[4]

2.10 On 24 January 2013, the author lodged a complaint with the Supreme Court of Nepal seeking compensation for the harm endured and requesting an exemption from the application of the 35-day limit in the particular circumstances of his case. At the time of submission of the present communication (20 February 2014), the Supreme Court of Nepal had not yet ruled on his complaint. However, the author submits that he has exhausted all available and effective domestic remedies, noting that his complaint before the Supreme Court has no prospect of success, given that the Court has never allowed an exemption from the 35-day limit in its case law, nor declared it inapplicable. He further argues that, on 8 May 2011, the first occasion when he was brought before a judge, he reported that he had been subjected to torture and that his confession had been extracted under torture. Despite this, no investigation was undertaken by the authorities at the time of the author's submission of the communication to the Committee, and no investigation has taken place in the four years since the allegation was brought to the attention of the authorities. The author submits that this amounts to an undue delay of proceedings. He further notes that, on 13 February 2014, he submitted a formal request to the National Human Rights Commission for the investigation of and reparation for acts of torture. However, he submits that a complaint to the Commission is not a judicial remedy within the meaning of article 5 (2) (b) of the Optional Protocol as the Commission can only issue recommendations and does not have any power to have those recommendations enforced.[5]

2.11 The author further submits that the urgent appeal he submitted to the Special Rapporteur on torture on 16 October 2012 does not constitute a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol, in accordance with the well-established jurisprudence of the Committee.[6]

The complaint

3.1 The author claims that the State party has violated his rights under articles 7 and 10 (1), read alone and in conjunction with article 2 (3), and under articles 9 (1)–(3) and 14 (2) and (3) (b) and (g) of the Covenant.

3.2 The author submits that the State party has violated his rights under articles 7 and 10 (1), read alone and in conjunction with article 2 (3) of the Covenant, because of the torture, ill-treatment and inhumane conditions of detention he was subjected to and the subsequent failure by State party authorities to carry out an ex officio, prompt, effective, independent, impartial and thorough investigation into the allegations and to hold those responsible to account. He claims that he was arbitrarily deprived of his liberty and subjected to unacknowledged and *incommunicado* detention between 7 and 13 April 2011. In this connection, the author notes that the Committee against Torture has previously found that the use of torture in Nepal is widespread, particularly during interrogations and in situations of incommunicado detention.[7] He claims that he was subjected to torture and physical ill-treatment by State officials while in detention and was forced to confess his participation in a terrorist attack by means of torture, in violation of his rights under article 7 of the Covenant. He further claims that he was kept blindfolded for a prolonged period of time, was forced to stand continuously for more than 50 hours, was not given any food for three days and did not have access to drinking water for two days. He was denied medical treatment and assistance, although he had been severely harmed by the treatment inflicted by State agents. The cells in which he was held were filthy, overcrowded and in deplorable

[4] The author refers to *Maharjan v. Nepal* (CCPR/C/105/D/1863/2009), para 7.6, and *Giri v. Nepal* (CCPR/C/101/D/1761/2008 and Corr.1), para. 6.3.

[5] The author refers to *Giri v. Nepal*, para 6.3.

[6] The author refers to *Aboufaied v. Libya* (CCPR/C/104/D/1782/2008), para. 6.2.

[7] "Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party" (A/67/44, Annex XIII).

hygienic conditions. The author submits that the treatment he was subjected to and the conditions in which he was held amount to a violation of his rights under article 10 (1) of the Covenant. The author further submits that State party authorities' failure to conduct a thorough, independent, impartial and prompt investigation into his allegations of torture amount to a violation of his rights under articles 7 and 10 (1), read in conjunction with article 2 (3) of the Covenant.

3.3 The author claims that his rights under article 9 (1)–(3) of the Covenant were violated as he was subjected to arbitrary arrest and detention, was not informed at the time of his arrest of the reasons for his arrest and was not promptly informed of the charges against him. He was violently arrested without a warrant and was not informed about the reasons for his arrest. He was held incommunicado from 7 to 13 April 2011, during which time his mother could not obtain any information on his fate and whereabouts. When she approached the authorities to obtain information, they denied that the author had been detained. The author was held without any contact with the outside world and had no access to a lawyer during the initial phases of his deprivation of liberty, nor did he have access to medical assistance. In this respect, the author refers to the Committee's general comment No. 35 (2014) on liberty and security of person, in which the Committee indicates that the deprivation of liberty of an individual without access to counsel is arbitrary. Moreover, the author claims that he was not brought promptly before a judge to challenge the legality of his detention or the charges brought against him.

3.4 The author claims a violation of his rights under article 14 (2) and (3) (b) and (g) of the Covenant. He notes that, after he signed his forced confession, the media published articles relating to his arrest and openly referred to him as a member of an illegal armed group, in violation of his right to be presumed innocent under article 14 (2). He additionally claims that the fact that he was held in incommunicado detention and was deprived of his right to challenge the lawfulness of his detention hampered the presumption of innocence. He further claims that, during the first five days of his detention, he was subjected to repeated interrogation without any legal assistance. Moreover, although he claimed that evidence against him had been obtained through torture, his forced confession was retained as valid evidence by the Court, without considering the circumstances in which such evidence was obtained.

3.5 Accordingly, the author requests the Committee to find a violation of the aforementioned articles and requests the State party to provide him with comprehensive reparation, rehabilitation and satisfaction for the material and moral damages suffered. In particular, he requests a restoration of his dignity, which could be achieved by a public declaration of official apology from the State party and medical and psychological care, free of charge, in order to treat his mental suffering. As for guarantees of non-repetition, the author requests the adoption of an autonomous definition of the crime of torture under Nepalese law, the suppression of the unduly restrictive 35-day statutory limit for submitting complaints related to ill-treatment and the establishment of educational programmes on international human rights law for all members of the Nepalese security forces and the judiciary.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 6 February 2015, the State party submitted its observations on admissibility and the merits of the communication. The State party claims that domestic remedies have not been exhausted. It indicates that, under domestic law,[8] any suspect may request a medical check-up before the trial court examining permission for remand, and it stems from the communication that the author did not do so. This was an available remedy for the author that has not been exhausted. In addition to this, the State party submits that it is not clear from the information provided by the author whether or not he filed a petition for writ of habeas corpus, as provided for under article 107 (2) of the Interim Constitution of Nepal, 2063 (2007), which can be lodged with a district court, an appellate court or the Supreme Court under its extraordinary jurisdiction. The State party further submits that the

[8] State Cases Act, 1992.

author could have filed a claim for compensation before the District Court of Rupandehi within 35 days of his release if he felt that he had been ill-treated or tortured during his detention. Regarding the petition the author lodged with the Supreme Court on 24 January 2013, the State party submits that, since the court has not yet decided the case, it is unable to comment on it at this stage.

4.2 On the merits, the State party is mainly challenging the credibility of the author's statements. In that connection, the State party claims that the author's allegations are not based on facts and reality. It indicates that the author has been convicted for his involvement in the Butwal explosion of 27 March 2011, and submits that he has served a regular sentence for the crime he committed. The State party further affirms that the author, while in detention, was not tortured in any manner, in full compliance with article 7 of the Covenant. It argues that the pain or suffering emanating from the lawful sanctions or measures taken in the course of criminal justice should not be considered as torture.

4.3 The State party submits that the Interim Constitution of Nepal guarantees fundamental freedoms and is explicitly committed to respecting the spirit of international human rights instruments. In that connection, the State party refers to several dispositions of the Interim Constitution of Nepal[9] to deny the allegations of the author and recalls that its Constitution provides for the prevention of extrajudicial detention or trial, the use of torture to obtain evidence or the conviction of individuals without legal representation, with sufficient guarantees.

4.4 The State party affirms that evidence obtained illegally, for example by inflicting torture, is not admissible evidence before the State party's courts of law.[10] In this context, the author's allegation that the confession was obtained under torture is groundless and emotionalized, given that the confession was recorded in front of the prosecutor, being impartial and independent from the police. The State party claims that the author did not raise his allegations of torture during the court proceedings. It notes that, according to the State Cases Act, 1992, police personnel, when conducting investigations into crimes, may arrest suspects where there are reasonable grounds to believe that they were involved in a crime. The author was arrested under section 14 of this act.

4.5 The State party notes that the author was able to appeal the verdict of the District Court of Rupandehi of 13 June 2012 to the Appellate Court of Butwal. However, the appeal was rejected, and the Appellate Court confirmed the judgment of the District Court. The State party argues that due process has been respected during the domestic proceedings by an independent and impartial judiciary.

4.6 The State party further claims that the accusation that torture is common and widespread in the Terai region is a biased view, which is not grounded in reality. In this respect, it notes that a bill to fully criminalize torture and compensate victims is under consideration at the Federal Parliament in order to improve compliance with the State party's international obligations.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 31 March 2015, the author submitted his comments on the State party's observations dated 6 February 2015.

5.2 In response to the State party's argument on the credibility of his statements, the author argues that the State party has not provided any evidence to demonstrate that his allegations are not accurate. He notes that his allegation of torture relates to events that occurred while he was being held in custody by the authorities of the State party. The author therefore submits that, according to the Committee's jurisprudence,[11] it is for the State party to produce evidence refuting torture allegations.

[9] Interim Constitution of Nepal, 2063 (2007), arts. 12 (1), 13(2), 24 and 100.

[10] Under section 9 (2) (a) (ii) of the Evidence Act, 1974.

[11] The author refers to *Giri v. Nepal*, para. 7.4.

5.3 The author reiterates his claim under articles 9 (1)–(3), 10 (1) and 14 (2) and (3) (b) and (g) of the Covenant. He argues that his claims under these articles have not been rebutted by the State party in its observations and that the State party has not provided any meaningful element to detract from his claims.

5.4 The author further refers to the State party's statement denying that he was subjected to torture while held in detention. He notes that the State party bears the burden of producing evidence refuting the torture allegations and providing a plausible explanation as to how his injuries occurred, and submits that it has failed to do so. In addition, the author submits that the State party has failed to demonstrate that its authorities addressed the torture allegations brought by him expeditiously and adequately.[12] He further refers to the State party's contention that he did not mention the issue of torture in the court proceedings and recalls that he claimed to have been subjected to torture on the first occasion when he was brought before a judge (on 8 May 2011 before the Rupandehi District Court).[13] He explains that, at that time, he was not represented by a lawyer and did not know that he could formally request the Court to arrange for a medical examination, but he notes that he reported torture allegations and that the judge should have ordered the examination ex officio. Accordingly, the author alleges that the authorities of the State party failed to order a medical examination and conduct a thorough investigation into his allegations of torture.

5.5 The author indicates that, following the transmittal of the State party's observations, his precarious state of health worsened further because the denial of his suffering frustrated his hope of attaining justice. Therefore, he reiterates the request presented in his initial communication to immediately receive medical and psychological care, free of charge, provided by the State party.

5.6 The author notes that, in its observations, the State party submitted that he should have filed a complaint before the Rupandehi District Court under the Compensation relating to Torture Act in order to exhaust domestic remedies. The author recalls that his mother did so on 12 December 2012. However, this complaint was not registered, as the 35-day period had expired. The author reiterates that he could not file a complaint before the expiration of the deadline, given that he was hospitalized and traumatized. In addition to this, the author refers to the Committee's jurisprudence[14] considering that the strict limitation period provided in the Act is in itself flagrantly inconsistent with the gravity of the crime and that it cannot be considered as an effective remedy pursuant to article 5 (2) (b) of the Optional Protocol.

5.7 Furthermore, the author notes that his claim that torture is widespread and systematic in the Terai is not based on his own speculation but rather on the findings of international human rights mechanisms[15] and on the reports of non-governmental organizations.[16] Most notably, in its 2014 concluding observations on Nepal,[17] the Human Rights Committee expressed its concerns at reports of unlawful killings in the Terai region, deaths in custody, and the official confirmation of the widespread use of torture and ill-treatment in places of police custody (CCPR/C/NPL/CO/2, para. 10).

State party's additional observations

6.1 On 4 September 2015, the State party submitted additional observations on admissibility and merits of the communication. The State party reiterates its argument about

[12] The author refers to *Giri v. Nepal*, paras. 7.2 and 7.6, as well as to *Khoroshenko v. Russian Federation* (CCPR/C/101/D/1304/2004), paras. 9.4 and 9.5.

[13] In his initial communication, the author attached as an annex an unofficial translation of the transcript of the Rupandehi District Court hearing on 8 May 2011, according to which he claimed that he had been tortured and forced to sign a confession.

[14] *Maharajan v. Nepal*, para. 7.6.

[15] "Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party" (A/67/44, Annex XIII).

[16] Terai Human Rights Defenders Alliance, *Arbitrary Detention and Torture in the Terai* (2013) can be found online at http://www.thrda.org/issues/.

[17] Concluding observations on the second periodic report of Nepal (CCPR/C/NPL/CO/2), para. 10.

the non-exhaustion of domestic remedies and additionally notes that the author failed to exhaust domestic remedies by appealing the verdict of the Rupandehi District Court of 13 June 2012.

6.2 The State party notes that, in cases of torture allegations, the Court is mandated to order a medical examination, and it argues that it cannot be assumed that the independent District Court did not follow the due process guaranteed by national law. It further explains that the refusal of the District Court registrar to register the author's complaint was based on the expiration of the 35-day limit under domestic law. For these reasons, the State party considers that the author's contention about arbitrary arrest and subsequent torture is not supported by facts and evidence. In addition, the author's writ of mandamus filed before the Supreme Court of Nepal is still pending.

6.3 The State party reiterates that it provides its citizens with a fair and independent investigation and prosecution mechanism. Therefore, it denies that the arrest of the author was arbitrary, given that he was arrested, investigated and prosecuted in accordance with domestic law. The State party argues that its sovereignty implies the ability to govern its own internal affairs without interference from any authority, given that no authority exists above the State.

6.4 The State party further submits that it is inaccurate to claim that the author was not informed about the reasons of his arrest, since his right to due process was guaranteed by the Interim Constitution of Nepal. In addition, it alleges that the arguments put forward to substantiate the author's allegations of torture are not based on facts. In this connection, article 100 of the Interim Constitution of Nepal guarantees the independence of justice which, in numerous examples, intervened to protect the fundamental rights of its citizens.

6.5 The State party notes that anyone who is in custody, either in detention or serving time after a final verdict, can request a medical examination. In this regard, the Attorney General ensures that each individual is treated humanely and has access to family visits, legal advice and medical examination. The State party submits that the author could have filed a complaint with the Attorney General.

6.6 The State party claims that it is common practice in Nepal that, when a person is brought before a judge, she or he is asked whether she or he was subjected to torture during the course of investigations. In the present case, it claims that the author's claim that the Rupandehi District Court was informed of his allegations of torture is untrue and fabricated.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether the case is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 With reference to the provisions of article 14 (2) of the Covenant, the Committee notes that the author submitted two excerpts of articles published by local newspapers on 13 and 14 April 2011, just after he signed his forced confession, openly referring to him as a member of an illegal armed group, and that he claimed to have had his right to be presumed innocent violated. On the basis of the material available to it, the Committee notes that the author did not raise this complaint at the domestic level and that, while complainants are not obliged to cite specific provisions of the Covenant which they claim have been violated, they must mention in substantive terms, in domestic courts, the grounds which they later present to the Committee.[18] Since the author failed to lodge his complaint relating to his rights under article 14 (2) before the domestic courts, the Committee

[18] *Pisconieri v. Spain* (CCPR/C/78/D/956/2000), para. 6.5.

concludes that this part of the communication is inadmissible under article 5 (2) (b) of the Optional Protocol.

7.4 With respect to the exhaustion of domestic remedies as concerns the rest of the author's claims, the Committee notes that the author's complaint reporting the allegations of torture, filed by his mother on his behalf with the registrar of the Rupandehi District Court on 12 December 2012, was not registered, as it allegedly did not comply with the 35-day statutory limit established under the Compensation relating to Torture Act. The Committee further notes the author's argument that filing a complaint within 35 days of the date of the infliction of torture would have been impossible for him as he was being held in detention and was not allowed to file a complaint. It further notes his submission that he could not file a complaint within the 35-day time limit after his release, as he was hospitalized for several months upon release. The Committee additionally considers that, because the 35-day statutory limit from the event of torture or the date of release for bringing claims under the Compensation relating to Torture Act is in itself flagrantly inconsistent with the gravity of the crime,[19] this remedy was not available to the author.[20]

7.5 The Committee notes the State party's argument that the communication does not fulfil the requirements of article 5 (2) (b) of the Optional Protocol, because the author did not formally request a medical examination in accordance with the State Cases Rules before the District Court examining his remand in custody. In that connection, the Committee takes note of the author's submission that, during the first hearing of the Rupandehi District Court in May 2011, he claimed that he had been ill-treated and that his confession had been obtained under torture. The Committee observes that, even though the State party challenged this part of the author's statement, this allegation is corroborated by the unofficial translation of the court hearing provided by the author, which is not refuted by any official translation produced by the State party. The Committee notes that the author explained that he was not represented by counsel at this time and that he was unaware that he could formally request the Court to arrange for a medical examination, and further notes that the author has argued that the judge should have ordered such an examination ex officio when he reported his allegations of torture.

7.6 The Committee also notes the State party's argument that the author failed to exhaust domestic remedies because no petitions for writ of habeas corpus were filed and because a petition for writ of mandamus filed by the author was still under consideration by the Supreme Court of Nepal. In this regard, the Committee observes that the State party has merely listed *in abstracto* the existence of remedies regarding the author's allegation of torture under the Interim Constitution of Nepal without relating them to the circumstances of the author's case and without showing how they might have provided effective redress in these circumstances.[21] In addition, the Committee notes that the State party provided contradictory information when it first submitted that the author had filed an appeal to the Appellate Court before claiming that the author did not file such an appeal. In this context, the Committee recalls that the effectiveness of a remedy depends on the nature and the particular seriousness of the alleged violation.[22]

7.7 The Committee further recalls that, for the purposes of article 5 (2) (b) of the Optional Protocol, domestic remedies must both be effective and available, and must not be unduly prolonged.[23] In the present case, the State party has provided no information indicating that an investigation into the author's allegations of torture has been undertaken by the State party since the allegations were first brought to its attention in May 2011. The Committee concludes that this constitutes an unreasonably prolonged delay. The Committee therefore concludes that it is not precluded by article 5 (2) (b) of the Optional

[19] General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18.

[20] *Maharajan v. Nepal*, para. 7.6.

[21] Ibid., para. 7.4.

[22] *Vicente et al. v. Columbia* (CCPR/C/60/D/612/1995), para. 5.2.

[23] *Marcellana and Gumanoy v. Philippines* (CCPR/C/94/D/1560/2007), para. 6.2, and *Giri v. Nepal*, para. 6.3.

Protocol from examining the author's claims under articles 7 and 10 (1), read alone and in conjunction with article 2 (3), and under articles 9 (1)–(3) and 14 (3) (b) and (g) of the Covenant.

7.8 In the absence of any other challenges to the admissibility of the communication, the Committee declares the communication admissible insofar as it concerns the author's claims under articles 7 and 10 (1), read alone and in conjunction with articles 2 (3), 9 (1)–(3) and 14 (3) (b) and (g).

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's allegations that, while he was detained, he was tortured and subjected to ill-treatment by the police in order to obtain his confession of guilt in a crime investigation. In that connection, the Committee notes the various findings of international human rights bodies and reports of non-governmental organizations highlighting the widespread practice of torture in the Terai, as submitted by the author.[24] The Committee also notes the author's claims that he reported having been tortured to the Rupandehi District Court on two occasions, first in person on 8 May 2011. Subsequently, his mother filed a complaint to the court registrar, acting on the author's behalf, on 12 December 2012. The Committee takes into consideration the fact that the State party did not challenge the fact that the author's mother reported the allegations of torture to the District Court on 12 December 2012.

8.3 The Committee recalls that article 7 of the Covenant allows of no limitation, even in situations of public emergency,[25] and that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially. The Committee reiterates its position that the burden of proof cannot rest solely with the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to the relevant information.[26] In cases where the allegations are corroborated by credible evidence submitted by the author and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider an author's allegations to be substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. The Committee further recalls that, in the absence of any convincing explanations from the State party, due weight must be given to the author's allegations.[27]

8.4 According to the material on file, the Committee observes that, several years after the author made allegations of torture for the first time, no investigation has yet been carried out by the authorities of the State party. The Committee considers that, in the circumstances of the present case, the State party has failed to demonstrate that its authorities addressed the torture allegations brought by the author expeditiously and adequately.[28] The author has demonstrated that he endeavoured to report his allegations to the authorities of the State party on several occasions by filing complaints to the National Human Rights Commission, the District Court and the Supreme Court. The Committee considers in particular that, in the absence of any convincing explanations from the State party as concerns the author's claims, which are supported by the transcript of the court hearing of 8 May 2011, due weight should be given to the author's allegations. In the circumstances of the present case, the Committee therefore concludes that the facts before it

[24] See the following similar cases before the Committee: *Giri v. Nepal*, *Maharajan v. Nepal* and *Katwal v. Nepal* (CCPR/C/113/D/2000/2010).

[25] General comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 3.

[26] *Khoroshenko v. Russian Federation* para. 9.5.

[27] *Giri v. Nepal*, para. 7.4, and *El Awani v. Libyan Arab Jamahiriya* (CCPR/C/90/D/1295/2004), para. 6.5.

[28] *Khoroshenko v. Russian Federation*, para. 9.5.

disclose a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3) of the Covenant.

8.5 The Committee notes, with regard to the alleged violation of article 9, the author's claims that he was arrested on 7 April 2011 without a warrant and without being informed of the reasons for his arrest or his rights, that he was detained incommunicado until 13 April, his relatives being unaware of his whereabouts, and that he had no access to a lawyer or to medical assistance. According to the information on file, the Committee further notes that the author was brought before a judge for the first time on 8 May 2011, one month after his arrest, and that he claims in this connection that his right to be brought promptly before a judge has been violated by the State party. In the absence of any pertinent explanations from the State party on the author's arrest and detention[29] from 7 April 2011 to 11 May 2011, the Committee finds a violation of the author's rights under article 9 (1)–(3) of the Covenant.

8.6 Regarding the author's claims under article 10 (1), the Committee notes his submission that his conditions of detention amounted to cruel, inhuman and degrading treatment. In particular, the author alleges that, during his incommunicado detention, he was kept blindfolded for a prolonged period of time and was forced to stand continuously for more than 50 hours. He submits that he was not given food for three days and had no access to drinking water for two days. The author claims that, during the rest of his detention in different facilities, he was detained in overcrowded cells in deplorable hygienic conditions infested with bugs and mosquitoes.

8.7 The Committee reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty, and that they must be treated with humanity and respect for their dignity.[30] It notes that the author demonstrated that he had endeavoured to report his allegations to the authorities of the State party by filing complaints to the National Human Rights Commission, the District Court and the Supreme Court. In the absence of information from the State party concerning the treatment of the author in detention, the Committee gives due weight to the author's allegations that his conditions of detention at the different detention facilities amounted to ill-treatment[31] and concludes that his rights under article 10 (1), read alone and in conjunction with article 2 (3), of the Covenant, were violated.

8.8 With reference to the provisions of article 14 (3) (b) of the Covenant, the Committee takes note of the author's submission that, during the first five days of his detention, he was subjected to repeated interrogations without any legal assistance. In that connection, the Committee recalls that, under article 14 of the Covenant, in the determination of any criminal charge, everyone shall be entitled to have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing. In the absence of any submission from the State party about the author's access to legal assistance during the first days of his detention, and taking note of the author's submission that, as a result, he was not legally represented and therefore was not able to file a formal request for medical examination before the District Court, the Committee considers that the author's rights to prepare his defence and communicate with counsel under article 14 (3) (b) of the Covenant have been violated.

8.9 The author further submits that, during his arbitrary detention, he was tortured by several police officers and forced to confess to a crime. That confession, the author claims, was used as a basis for his conviction on 13 June 2012, in violation of his rights under article 14 (3) (g). Considering the Committee's findings as concerns the violations under article 7 of the Covenant, the State party's inability or unwillingness to investigate the allegations of torture made by the author and the undisputed fact that the author's confession was retained as evidence and used as a basis for his conviction, the Committee

[29] *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004) para. 8.5; *Sharma v. Nepal* (CCPR/C/94/D/1469/2006), para. 7.3, and *Giri v. Nepal*, para. 7.8.

[30] General comment No. 21 (1992) on humane treatment of persons deprived of their liberty, para. 3.

[31] *Maharajan v. Nepal*, para. 8.7, and *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.2.

considers that the author's rights under article 14 (3) (g) of the Covenant were violated by the State party.[32]

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 7 and 10 (1), read alone and in conjunction with article 2 (3), and under articles 9 (1)–(3) and 14 (3) (b) and (g) of the Covenant.[33]

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy in the form of full reparation. Accordingly, the State party is obligated to, inter alia: (a) conduct a thorough and effective investigation into the author's allegations of torture and provide the author with detailed information about the results of its investigation; (b) prosecute, try and punish those responsible for the violations committed and make the results of such measures public; (c) expunge the author's criminal record as connected to the present complaint; (d) ensure that any necessary and adequate psychological rehabilitation and medical treatment are made available to the author; and (e) provide the author with compensation and appropriate measures of satisfaction for the violations suffered, including a public apology. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In particular, the State party should ensure that its legislation criminalizes torture and enforced disappearance and provides for appropriate sanctions and remedies commensurate with the gravity of the crimes; guarantees that any such cases shall give rise to a prompt, impartial and effective investigation; allows for the criminal prosecution of those responsible for such crimes; and amends the 35-day statutory limit for claiming compensation for torture, in accordance with international standards.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

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[32] *Lazarov v. Kyrgyzstan* (CCPR/C/118/D/2187/2012), para. 6.4.

[33] *Gupme et al. v. Nepal* (CCPR/C/120/D/2170/2012), para. 11, and *Purna Maya v. Nepal* (CCPR/C/119/D/2245/2013) para. 15.